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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 02A03-0806-CR-316

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0802-FD-132

FRIEDLANDER, Judge

Joseph L. Arrington pleaded guilty to Attempted Possession of a Controlled Substance by Subterfuge,¹ a class D felony. The trial court sentenced Arrington to one and one-half years in prison. On appeal, Arrington claims his sentence is inappropriate.

We affirm.²

On February 5, 2008, Arrington provided a Walgreens Pharmacy in Fort Wayne with a prescription for Vicodin made out in his mother's name. The pharmacy, suspecting this was a fraudulent prescription, checked with the doctor identified on the prescription and discovered that it was indeed fraudulent. When Arrington was arrested by police while waiting at the pharmacy, he denied any knowledge that the prescription was fraudulent, claiming that his mother had given him the prescription to fill. Arrington's mother, however, lives in an assisted living residence and receives her medications through a prescription service, PRN Pharmacy.

On February 15, 2008, the State charged Arrington with class D felony attempted possession of a controlled substance by subterfuge. Arrington subsequently pleaded guilty as charged without the benefit of a plea agreement. At the sentencing hearing, Arrington asked the court to impose the advisory sentence of one and one-half years, with one year of the sentence suspended to probation. The trial court, however, imposed a fully executed sentence of one and one-half years.

While Arrington does not challenge the length of his sentence on appeal, he argues

¹ Ind. Code Ann. 35-48-4-14(c) (West, PREMISE through 2008 2nd Regular Sess.); Ind. Code Ann. § 35-41-5-1 (West, PREMISE through 2008 2nd Regular Sess.).

² We note that Arrington included in his appendix a copy of the presentence investigation report on white paper. We remind Arrington that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential". T.R. 5(G)(1).

that his sentence is inappropriate because none of it was suspended to probation. He claims that a partially suspended sentence would provide him with an opportunity to obtain treatment for his addiction to prescription pain relievers.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Arrington bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

The record establishes that Arrington pleaded guilty to the instant offense without the benefit of a plea agreement. Further, the record supports Arrington's claim that the crime was the result of his addiction to prescription pain relievers, an addiction that began after he was seriously burned in a 2006 house fire. If this were the entire picture, Arrington might have a strong argument that some of his sentence should have been suspended. This, however, is far from the whole picture. Arrington's extensive criminal history reveals that the fully-executed, advisory sentence imposed by the trial court was not inappropriate. As observed by the trial court at the sentencing hearing, Arrington has five prior felony convictions (burglary (1984 and 1993), robbery (1985), cocaine possession (2002), and escape (2005)) and eight misdemeanor convictions. Moreover, he

has had probation revoked four times, parole revoked once, and work release revoked once. Arrington's criminal history reveals a consistent pattern of criminal behavior and an inability or unwillingness to conform to the law, despite prior lenient treatment by our judicial system and two courses of substance abuse treatment. The trial court's determination that Arrington's sentence should be fully executed was not inappropriate, particularly in light of his character.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur